

1421-146



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

WILLIAM H. EBY

Serial No. 10/750,648

Filed: December 31, 2003

For: **SOYBEAN CULTIVAR S030157**



Art Unit: 1638

Examiner: E. McElwain

DECLARATION UNDER 37 C.F.R. '1.132

Commissioner of Patents
P O Box 1450
Alexandria VA 22313-1450

Sir:

I, William H. Eby, of 4763 Panorama Drive, Panora, Iowa 50216, hereby declare that:

Since 1968, I have been involved in soybean breeding for Stine Seed Farm, Inc.

I am the inventor of the invention described and claimed in the above-identified application and am familiar with the Office Action dated November 3, 2005, in which the Examiner alleges that claims 9-22 are anticipated under 35 U.S.C. 102(b) or, in the alternative, are obvious under 35 U.S.C. 103 over U.S. Patent No. 6,103,957.

I submit there are major differences between the present invention and the variety claimed in U.S. Patent No. 6,103,957. For example, soybean cultivar 931177502714 (U.S. Patent No. 6,103,957) contains the *Phytophthora* Rps1k gene

conferring resistance to races 1-11, 13-15, 17-18, 22, and 24 (column 5, lines 17-19 and the table at the bottom of column 5 through the top of column 6 listing the races of *Phytophthora*). In contrast, soybean cultivar S030157 of the present invention does not contain the *Phytophthora* Rps1k gene.

Thus, this difference shows the present invention is novel and non-obvious relative to soybean cultivar 931177502714 (U.S. Patent No. 6,103,957).

I, the undersigned, declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: 1-5-06



WILLIAM H. EBY